IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

SATURDAY, THE 1ST DECEMBER 2007 / 10TH AGRAHAYANA 1929

WP(C).No. 33498 of 2007(K)

PETITIONER:

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1. RARICHAN GEORGE, S/O.GEORGE,
KUZHIKUTHIYANIYIL HOUSE, KANCHIYAR KARA,
KATTAPPANA VILLAGE, UDUMBANCHOLA TALUK,
IDUKKI DISTRICT.

2. P.M.JOSE, S/O.MATHEW, PAYYANICKAL
HOUSE, CHAKKULAM KARA, UDUMBANCHOLA,
IDUKKI DISTRICT.

BY ADV. SRI.LIJI.J.VADAKEDOM

RESPONDENTS:

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1. THE COMMISSIONER OF EXCISE,
OFFICE OF THE COMMISSIONER OF EXCISE,
THIRUVANANTHAPURAM.

2. THE ASST.EXCISE COMMISSIONER OF EXCISE
IDUKKI, OFFICE OF THE ASST.EXCISE COMMISSIONER,
THODUPUZHA, IDUKKI DISTRICT.

3. THE EXCISE INSPECTOR, EXCISE OFFICE,
KATTAPPANA.

4. SAJI PHILIP, S/O.PHILIP, KADUKUNNEL
HOUSE, KATTAPPANA P.O., IDUKKI DISTRICT.

BY GOVERNMENT PLEADER, SRI P.K.RAVIKRISHNAN for R1 TO R3

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30/11/2007, THE COURT ON 01/12/2007 DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXTS:

EXT.P1 TRUE COPY OF THE NOTIFICATION NO.GO(P) 43/2007/TD, DATED 13/03/2007 AMENDING ABKARI SHOPS DISPOSAL RULES.

EXT.P2 TRUE COPY OF THE INTIMATION DATED 01/04/2007 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONERS AND 4TH RESPONDENT.

EXT.P3 TRUE COPY OF THE LICENCE GRANTED IN RESPECT OF TS NO.8/2007-2007 OF KATTAPPANA EXCISE RANGE.

EXT.P4 TRUE COPY OF THE AGREEMENT EXECUTED IN BETWEEN THE PETITIONERS AND THE 4TH RESPONDENT

EXT.P5 TRUE COPY OF THE ORDER NO.X-A2-24246/07 DATED 25/09/2007 ISSUED BY THE 1ST RESPONDENT SUSPENDING THE LICENCE GRANTED TO THE PETITIONERS' GROUP.

EXT.P6 TRUE COPY OF THE OBJECTION SUBMITTED BY THE PETITIONERS TO THE 1ST RESPONDENT.

EXT.P7 TRUE COPY OF THE ORDER NO.XA2-24246/2007 DATED 07/11/2007 ISSUED BY THE 1ST RESPONDENT.

\\TRUE COPY//

THOTTATHIL B. RADHAKRISHNAN, J.

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W.P.(C) No. 33498 of 2007-K

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Dated this the 1st day of December, 2007

"C.R"

J U D G M E N T

The privilege to vend toddy in six shops forming Group-II of Kattappana Excise Range was bid by a group of individuals, namely, the petitioners and the fourth respondent. Ext.P3 licence was issued in their names. The fourth respondent was also one among those in another group of individuals to whom the privilege to vend toddy in Group-III of that range was licensed, following the auction. Crime Nos.61/2007 and 62/2007 were registered against the fourth respondent for offences punishable under Section 8(2) of the Abkari Act, 1077, hereinafter, referred to as, the 'Act', on the allegation of violation of Section 8(1) in relation to two shops in Group-III. On the basis of that, the first respondent Commissioner of Excise has cancelled Ext.P3 licence, in relation to Group-II, as per the impugned Ext.P7.

2. In support of the writ petition, two alternate contentions are raised. The first is that the group of individuals, in terms of Rule 3 (1) of the Kerala Abkari Shops Disposal Rules, 2002, hereinafter, referred to as, the 'Rules', is a separate legal entity or a juristic person, and therefore, any violation of the law by the fourth respondent, in the course of his activity as a licensee in Group-III cannot attract the liability for cancellation of licence of Group-II, which is granted to the group of individuals consisting of the petitioners and the fourth respondent. Alternatively, it is contended that even if the group of individuals for the purpose of the said rule is only a collection of individuals without having the status of a juristic person, collectively, the disqualification incurred by one member, namely, the fourth respondent herein, cannot affect the right of the other members to hold the licence, since, in such a situation, each member has to be treated as a separate licence holder under the Rules.

3. A counter affidavit is placed contending that the concept of “group” in the Rules following their amendment, as per the Kerala Abkari Shops Disposal (Amendment) Rules, 2007, is that, the

groups are formed not for getting the privilege but are meant only for the disposal of the shops in groups and that the liability of all individuals in a group is joint, and such joint liability takes away the right of the petitioners also, in terms of Rules 5(3) and 5(4) of the Rules, to run the toddy shop in Group-II on the ground referable to commissions and omissions of the fourth respondent, in relation to Group-III.

4. Section 26 of the Act provides the power to the Commissioner to cancel any licence or permit granted under the Act, on different counts including any breach, by the holder of such licence, of any of the terms and conditions of such licence or permit. Clause 38 among the general conditions in Ext.P3 licence provides that the licensee shall obey all abkari laws including rules and laws governing abkari revenue, as well as those laws that may be brought into force to regulate the field. Clauses 31 and 32 of those general conditions further provide that, if licensee violates any of the conditions of the Rules or terms of licence, the licence shall be liable for cancellation and such cancellation will be without prejudice to prosecution and other provisions in the abkari laws.

Section 8(1) of the Act contains the prohibition regarding arrack. Obviously, therefore, a violation of that prohibition imposed by law, by the fourth respondent, amounts to breach of the terms of Ext.P3 licence in relation to Group-II of Kattappana Excise Range, though, he is alleged to have committed the offence punishable under Section 8(2) of the Act, in relation to two shops in Group-III. This is simply because he is an offender and an offender is one so, wherever he is. The fourth respondent, by the violation of Section 8(1) of the Act, has violated the terms of Ext.P3.

5. Ext.P3 licence is a conferment of a privilege to vend. The term of the grant, as per Ext.P3, is indisputable, that it is jointly in favour of the petitioners and the fourth respondent. The question whether, they constitute a juristic person collectively or is only an association of individuals is of no consequence because, in exercising power under Section 26 of the Act, what the Commissioner may do is to cancel the licence. Therefore, the liability for cancellation of a licence is not severable and the licence cannot be dissected to segregate it to be partly in favour of each individual who joined to be the group of individuals for the

purpose of Rule 3(1) of the Rules as amended in 2007. The contentions of the petitioners challenging the cancellation of Ext.P3 licence, therefore, fail.

6. The petitioners' further case that Ext.P4 is an agreement between the petitioners and the fourth respondent, whereby, they have divided among themselves the liabilities and responsibilities, as also the right to run the different shops; the first petitioner taking shops 5 and 9, the second petitioner taking shops 8 and 19 and, the fourth petitioner taking shops 7 and 10 in Group-II and that therefore the petitioners are entitled to sustain Ext.P3 licence in so far as it relates to their shops also, does not stand. That private agreement between the petitioners and the fourth respondent, to regulate their business, is wholly irrelevant and not binding on the Government.

During the course of this writ petition, the respondents had notified the re-auction of the shops. Though, Ext.P3 licence has gone in terms of Ext.P7, the incriminating element of having violated Section 8(1) of the Act, cannot be reasonably fastened on

the petitioners, particularly, when the respondents do not have a case of any seizure of arrack from any of the six shops that compose Group-II. Therefore, there would be no legal infirmity or impediment in extending the petitioners, any preference in the re-auction, either individually or otherwise, at any rate, without the junction of the fourth respondent. Subject to what is stated in this paragraph, this writ petition fails and the same is dismissed accordingly. No costs.

Sd/-

THOTTATHIL B. RADHAKRISHNAN,
Judge

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